

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
BOSTON DIVISION

UNITED STATES OF AMERICA	§	
<i>ex rel.</i> James Banigan and Richard Templin,	§	
<i>et al.</i>	§	
Plaintiffs,	§	
	§	CIVIL NO. 07-12153-RWZ
VS.	§	
ORGANON USA INC.; OMNICARE, INC.;	§	
PHARMERICA, INC.; ORGANON	§	
BIOSCIENCES N.V.; and	§	
SCHERING PLOUGH CORP.	§	
Defendants.	§	

RELATORS' MOTION TO SUPPLEMENT  
SUMMARY JUDGMENT RECORD (OPPOSED IN PART)

On April 4, 2016, Relators James Banigan and Richard Templin filed responses to Omnicare's Motions for Summary Judgment (Dkt. Nos. 439, 441), as well as Exhibits 1-94 in support of that motion. Relators respectfully submit this Motion to Supplement the Summary Judgment Record, requesting leave from the Court to add Exhibits 95 and 96 and to supplement Exhibits 1, 64, and 66. Accordingly, Relators respectfully show as follows:

A. Relators seek leave to add Exhibits 95 and 96 to the summary judgement record.

Omnicare argues that compliance with the Anti-Kickback Statute was not a condition to Omnicare receiving Medicaid payments. Dkt. No. at 414. In response, Relators sought declarations from the Hawaii and Tennessee Medicaid programs, which state that compliance with the AKS is a condition of receiving Medicaid payments from those states. Relators did not receive these declarations until after they filed their response to Omnicare's Motion for Summary judgment. Accordingly, Relators seek leave from the Court to supplement the record with these

documents. *See* Attachments A, B. These documents will be Exhibits 95 and 96 respectively. Omnicare objects to the addition of Exhibits 95 and 96 to the summary judgment record.

B. Relators seek leave to supplement Exhibit 1 of the summary judgement record.

Relators' Exhibit 1 is the expert report of Dr. Rena M. Conti. Relators seek leave from the Court to supplement Exhibit 1 with the document attached as Attachment C, an affidavit verifying Dr. Conti's expert report. Omnicare objects to the addition of this document to the summary judgment record.

C. Relators seek leave to supplement Exhibit 64 of the summary judgement record.

Relators' Exhibit 64 is a June 8, 2001 e-mail from Kevin D. Duffy, Omnicare Senior Vice President for Global Marketing & Business Development, to Tim Bien, Omnicare Senior Vice President of Professional Services and Purchasing (hereinafter, June 8 e-mail). Attached to that e-mail was Exhibit 65, Kevin Duffy's "Company-Contact1" excel spreadsheet, which contains the following note: "John spoke to internal Organon members and appears to have 'upset' the clinical team by implying a 'quid pro quo' relationship w/Omnicare." Relators inadvertently omitted the June 11, 2001 e-mail forwarding the June 8 e-mail to Tim Bien. Accordingly, Relators seek leave from the Court to substitute Exhibit 64 with the document attached to this motion as Attachment D. This document includes the June 8 e-mail and the June 10 e-mail, which accompanied the June 8 e-mail in custodian Tim Bien's electronic files. Omnicare assents to the addition of Exhibit 64 to the summary judgment record.

D. Relators seek leave to supplement Exhibit 66 of the summary judgement record.

Relators' Exhibit 66 is a New York Times article that was attached to an e-mail chain. Relators submitted the article, but inadvertently omitted the e-mail chain that accompanied the article. Accordingly, Relators seek leave from the Court to substitute Exhibit 66 with the document

attached to this motion as Attachment E. This document includes the article, as well as the accompanying e-mail string. Omnicare assents to the addition of Exhibit 66 to the summary judgment record.

Dated: May 4, 2016

Respectfully submitted,

Relators James Banigan and Richard Templin:

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Certificate of Conference

Counsel for Relators conferred with Counsel for Omnicare on April 30, 2016, and May 2, 2016.

/s/ Zenobia Harris Bivens  
Zenobia Harris Bivens

Certificate of Service

The undersigned hereby certifies that a true and complete copy of the foregoing document was duly served on counsel via first class mail, electronic mail, facsimile and/or Certified Mail, Return Receipt Requested on this 4th day of May, 2016.

/s/ Zenobia Harris Bivens  
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